

Innovative Programs
1409 Coliseum Boulevard
Montgomery, AL 36110
FAX (334) 353-6550

**ALABAMA
DEPARTMENT OF
TRANSPORTATION**

Fax

To: The Honorable John Koniar

Mayor, City of Foley

Fax: 251-952-4014

Pages: 10 (including cover)

Phone:

Date: 03/09/2018

Company:

Re: ATRIP Agreement(s)

IF YOU EXPERIENCE A TRANSMISSION ERROR
Please Call Marshetia King (334) 353-6234 or E-mail
kingm@dot.state.al.us



Kay Ivey
Governor

ALABAMA DEPARTMENT OF TRANSPORTATION

Bureau of Innovative Programs
1409 Coliseum Boulevard
Administrative Building, Room 110
Montgomery, Alabama 36110
Telephone: 334-353-6234 / Fax: 334-353-6550
www.dot.state.al.us



John R. Cooper
Transportation Director

March 9, 2018

The Honorable John Koniar
Mayor, City of Foley
P.O. Box 1750
Foley, Alabama 36536-1750

RE: ACOA61159-ATRP(007)
ATRIP 02-05-44
Baldwin County
City of Foley

Dear Mayor Koniar:

Attached is the **original** Agreement between the Alabama Department of Transportation and the City of Foley covering the listed project's financing costs for construction.

Please complete and return this **original** Agreement as soon as possible with all **signatures** and **seals** to minimize delay of further approval and distribution. Upon approval of all parties, a properly executed copy of this Agreement will be sent to you for your information and file.

- **PLEASE DO NOT EXECUTE THE FAXED COPY OF THE AGREEMENT!**

Sincerely,

Terry W. Robinson, Acting Bureau Chief
Innovative Programs Bureau

TWR:mk

Attachment(s)

cc: Vince Calametti, P.E. (SW Region Engineer)
Don Powell, P.E. (Area Operations Engineer)
Clay McBrien, P.E. (Ms. Melva Bradford)
File

**AGREEMENT
FOR
ALABAMA TRANSPORTATION REHABILITATION AND IMPROVEMENT PROGRAM
(ATRIIP) PROJECT
BETWEEN THE STATE OF ALABAMA
AND
THE CITY OF FOLEY, ALABAMA**

This agreement is made and entered into by and between the State of Alabama, (acting by and through the Alabama Department of Transportation), hereinafter referred to as the STATE; and the City of Foley (FEIN 63-6001263), hereinafter referred to as the CITY; in cooperation with the United States Department of Transportation, the Federal Highway Administration, hereinafter referred to as the FHWA:

WITNESSETH

WHEREAS, the STATE and the CITY desire to cooperate in the resurfacing and extension (grade, drain, pave, and signals) of Fern Avenue from Airport Drive to Foley Beach Express.

Length - 3.365 miles

Project# ACOA61159-ATRP(007); ATRIP# 02-05-44

NOW THEREFORE, the parties hereto, for, and in consideration of the premises stated herein do hereby mutually promise, stipulate, and agree as follows:

- (1) The CITY will acquire any additional right-of-way, if needed, for the PROJECT at no cost to the STATE or this PROJECT.
- (2) The CITY will coordinate any required adjustments to utilities with the utility company involved in accordance with usual STATE procedures. Any utility expenses involved which are eligible for STATE reimbursement or payment under STATE law will be considered as part of the project cost and will be paid as provided herein. The STATE will not be liable for utility expenses that are not eligible for STATE reimbursement or payment under STATE law.
- (3) The CITY or its representative, will provide the required surveys, complete the plans and perform all other preliminary engineering duties for the PROJECT at no cost to the STATE or this PROJECT. The CITY will be responsible for submitting all required environmental documents to the STATE and obtaining approval prior to right-of-way acquisition or submittal of final plan assembly to the STATE. The plans will be subject to the approval of the STATE and the PROJECT will be constructed in accordance with the plans approved by the STATE and the terms of this agreement.
- (4) If necessary, the CITY will file an Alabama Department of Environmental Management (ADEM) National Pollutant Discharge Elimination System (NPDES) Notice of Registration (NOR) (Code Chapter 335-6-12) for the PROJECT. The CITY and the contractor will be responsible for compliance with the permit and the STATE will have no obligation regarding the permit. The CITY will furnish the STATE (Region) a copy of the permit prior to any work being performed by the contractor.

- (5) The CITY will furnish all construction engineering for the PROJECT with CITY forces or with a consultant selected and approved by the STATE as part of the PROJECT cost. The cost of construction engineering and inspection shall be included as part of the construction cost for the PROJECT and will be paid from funds provided herein.
- (6) The STATE will furnish the necessary inspection and testing of materials with STATE forces when needed as part of the PROJECT cost. The cost of inspection and testing of materials shall be included as part of the construction cost for the PROJECT and will be paid from funds provided herein.
- (7) The CITY will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction (latest edition) on the PROJECT and will ensure that alignment and grades on this PROJECT meet the standards of the Alabama Department of Transportation and that the PROJECT will be constructed in accordance with the approved plans.
- (8) The PROJECT will be administered by the STATE and all cost will be financed, when eligible for Federal participation, on the basis of eighty (80) percent Federal ATRIP funds and twenty (20) percent CITY funds, unless otherwise noted below. Any Federal aid non-participating costs shall be borne by the CITY at one hundred (100) percent.
- (9) Funding for this agreement is subject to the availability of Federal ATRIP funds at the time of authorization. The STATE will not be liable for Federal ATRIP funds in any amount. It is understood that the amounts stated below are estimates only. Any shortfall in funding or overrun in construction costs shall be borne by the CITY from Federal ATRIP funds, if available, and from CITY funds. In the event of an under-run in construction costs, the amount of Federal ATRIP funds will be the amount stated below, or eighty (80) percent of eligible costs, whichever is less.
- (10) The estimated cost of construction of this PROJECT will be provided from the funds outlined as follows:
- | | |
|---------------------------------------|----------------------|
| Federal ATRIP Funds | \$ 3,509,940.81 |
| CITY Funds | \$ <u>877,485.19</u> |
| Total (Including E & I and Utilities) | \$ 4,387,426.00 |
- (11) The STATE will be responsible for advertisement and receipt of bids, and the award of the contract. Following the receipt of bids and prior to the award of the contract, the STATE will invoice the CITY for its prorata share of the estimated cost (if applicable) as reflected by the bid of the successful bidder plus E & I and Utilities, and the CITY will pay this amount to the STATE no later than 30 days after the date bids are opened. Payment must be received prior to award of the contract.
- (12) A final audit will be made of all PROJECT records after completion of the PROJECT and a copy will be furnished to the Alabama Department of Examiners of Public Accounts, in accordance with Act. 1994, No. 94-414. A final financial settlement will be made between the parties as reflected by the final audit and this agreement.

- (13) The CITY will submit reimbursement invoices for the work performed under the terms of this agreement to the STATE within six (6) months after the completion and acceptance of the PROJECT. Any invoices submitted after this six (6) month period will not be eligible for payment.
- (14) Upon completion and acceptance of the work by the STATE, the CITY will assume full responsibility for maintenance of that part of the improvements which are not a part of the Alabama Highway Maintenance System. Upon completion and acceptance of the work by the STATE, the CITY will maintain the PROJECT in satisfactory condition in accordance with the requirements of the Alabama Department of Transportation.
- (15) Subject to the limitations on damages applicable to municipal corporations under Ala. Code § 11-47-190 (1975), the City shall indemnify, and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees from and against (1) claims, damages, losses, and expenses, including but not limited to attorneys' fees arising out of, connected with, resulting from or related to the work performed by the City, or its officers, employees, contracts, agents or assigns (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the City pursuant to the terms of this Agreement, or (3) any damage, loss, expense, bodily injury, or death, or injury or destruction of tangible property (other than the work itself), including loss of use therefrom, and including but not limited to attorneys' fees, caused by the negligent, careless or unskillful acts of the City its agents, servants, representatives or employees, or the misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the City, its agents, servants, representatives or employees, or anyone for whose acts the City may be liable.
- (16) By entering into this agreement, the CITY is not an agent of the STATE, its officers, employees, agents, or assigns. The CITY is an independent entity from the STATE and nothing in this agreement creates an agency relationship between the parties.
- (17) Each party will provide, without cost to the other, information available from its records that will facilitate the performance of the work.
- (18) Nothing will be construed under the terms of this agreement by the STATE or the CITY that will cause any conflict with Section 23-1-63, Code of Alabama (7/24th law).
- (19) The CITY will be obligated for the payment of damages occasioned to private property, public utilities or the general public, caused by the legal liability (in accordance with Alabama and/or Federal law) of the CITY, its agents, servants, employees or facilities.
- (20) Exhibits M and N are attached and hereby made a part of this agreement.
- (21) This agreement is made and expressly executed in the names of the parties hereto by their respective officers, officials or other persons who are authorized to execute it, and it is deemed by the parties to be an agreement or contract under seal.

- (22) By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.
- (23) The terms of this agreement may be modified by supplemental agreement duly executed by the parties hereto.
- (24) This agreement may be terminated by either party upon the delivery of a thirty (30) day notice termination.

IN WITNESS, WHEREOF, the parties hereto cause this agreement to be executed by those officers, officials, and persons thereunto duly authorized, and the agreement is deemed to be dated and to be effective on the date stated hereinafter as the date of the approval of the Governor of Alabama.

SEAL

ATTEST:

CITY OF FOLEY, ALABAMA

City Clerk (Signature)

BY: _____
Mayor (Signature)
City of Foley

Print Name of Clerk

Print Name of Mayor

RECOMMENDED FOR APPROVAL:

STATE OF ALABAMA
ACTING BY AND THROUGH THE
ALABAMA DEPARTMENT OF
TRANSPORTATION

Innovative Programs Acting Bureau Chief
Terry W. Robinson

Chief Engineer
Don T. Arkle, P.E.

THIS AGREEMENT HAS BEEN LEGALLY REVIEWED AND APPROVED AS TO FORM
AND CONTENT:

Chief Counsel
William F. Patty

Transportation Director
John R. Cooper

THE WITHIN AND FOREGOING AGREEMENT IS HEREBY APPROVED ON
THE _____ DAY OF _____, 20_____.

GOVERNOR OF ALABAMA
KAY IVEY

STD Contract Exhibit
Revised 09/19/2016

Exhibit M

CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

STD Contract Exhibit
Revised 09/19/2016

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT:

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this AGREEMENT shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this AGREEMENT, be enacted, then the conflicting provision in the AGREEMENT shall be deemed null and void.

When considering settlement of controversies arising from or related to the work covered by this AGREEMENT, the parties may agree to use appropriate forms of non-binding alternative dispute resolution

TERMINATION DUE TO INSUFFICIENT FUNDS:

If the Agreement term is to exceed more than one fiscal year, then said Agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the Agreement in subsequent fiscal years.

In the event of proration of the fund from which payment under this Agreement is to be made, Agreement will be subject to termination.

NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS:

The STATE and CITY acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations of or liabilities to the STATE, CITY, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The CITY agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subjected to its provisions.

RESOLUTION NUMBER

BE IT RESOLVED, by the City Council of the City of Foley, Alabama as follows:

1. That the City enters into an agreement with the State of Alabama, acting by and through the Alabama Department of Transportation for:

The resurfacing and extension (grade, drain, pave, and signals) of Fern Avenue from Airport Drive to Foley Beach Express. Length – 3.365 miles
Project# ACOA61159-ATRP(007); ATRIP# 02-05-44

2. That the agreement be executed in the name of the City, by its Mayor, for and on its behalf.
3. That the agreement be attested by the City Clerk and the seal of the City affixed thereto.

BE IT FURTHER RESOLVED, that upon the completion of the execution of the agreement by all parties, that a copy of such agreement be kept on file by the City Clerk.

Passed, adopted and approved this ____ day of _____, 20 ____.

ATTESTED:

City Clerk

Mayor, City of Foley

I, the undersigned qualified and acting clerk of the City of Foley, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the ____ day of _____, 20 ____, and that such resolution is on file in the City Clerk's office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City on the ____ day of _____, 20 ____.

City Clerk

SEAL